IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Chapter VIII, Rule 32(2) (b)
Description of case

Appeal from Order No. 238 of 2004

Date of decision: 25th April, 2006

A.F.R. (Approved for Reporting)

~~Not Approved for Reporting~~

Date 25.4.2006 Initials of Judge

Note: Bench Reader will attach this at the top of first page of the judgment when it is put up before the Judge for signature.

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Appeal from Order No. 238 of 2004

The New India Assurance Company Ltd.,
Through its Divisional Manager,
Opposite Judgee Court,
Nainital Road, Haldwani,
Nainital. …….. Appellant

Versus

1. Smt. Bimla Devi W/o Late Sri Badan Singh,
   R/o Maindya Bukshi Budiya Farm,
   Bazpur, Udham Singh Nagar.
2. Sri Hazi Ahsan S/o Sri Asfaq Hussain,
   R/o Rasulpur, Near Dikkampur,
   Tehsil Dilari, Moradabad,
   Registered Owner of
   Truck No. DL-1G/4319. ……. Respondents

Mr. R.B. Aggarwal, Advocate for the appellant.
None for the respondents.

JUDGMENT

Coram: Hon. Rajeev Gupta C. J.
Hon. Prafulla C. Pant, J.

RAJEEV GUPTA, C.J. (Oral)

Mr. R.B. Aggarwal, Advocate for the appellant.

None for the respondents.

As the learned counsel for the appellant is prepared and willing to argue the appeal finally, he is heard.

2. This is insurer's appeal under Section 30 of the Workmen's Compensation Act, 1923 against the Award dated 25.05.2004 passed by Commissioner for Workmen Compensation and Assistant Labour Commissioner, Udham Singh Nagar (Rudrapur) in W.C.C. No. 6 of 2002.

3. Respondent No. 1 Smt. Bimla Devi claimed compensation of Rs. 16,00,000/- (Rupees Sixteen Lakhs only) for the death of her husband Badan Singh, who was working as Driver on the Truck bearing registration No. DL-1G 4319 in the intervening night of 25th and 26th August, 2001 during the course of his employment. The

claimant pleaded that deceased Badan Singh used to earn Rs. 4,000/- per month as Driver and was 40 years of age at the time of his death.

4. The employer remained ex-parte before the Commissioner. Appellant Insurance Company contested the claim and denied its liability to pay compensation to the claimant.

5. The Commissioner for Workmen Compensation, on the evidence led by the parties, held that claimant's husband Badan Singh was working as Driver on Truck No. DL-1G 4319; that he died on account of the injuries sustained by him in the accident which occurred in the intervening night of 25th and 26th August, 2001; that his death was during the course of his employment; and that the Insurance Company was liable to pay compensation to the claimant. Relying upon the evidence led by the claimant about the income of the deceased, the Commissioner for Workmen Compensation assessed his income at Rs. 4,000/- per month. The Commissioner for Workmen Compensation further held that deceased Badan Singh at the time of the accident was 45 years of age as mentioned in the Post Mortem Report. The Commissioner for Workmen Compensation, therefore, assessed the compensation at Rs. 3,38,880/- (Rupees Three Lakhs Thirty Eight Thousand Eight Hundred and Eighty only). Interest at the rate of 12% amounting to Rs. 1,08,442/- (Rupees One Lakh Eight Thousand Four Hundred and Fourty Two only) was also awarded.

6. Mr. R.B. Aggarwal, the learned counsel for the appellant vehemently argued that the Commissioner for Workmen Compensation has erred in holding the Insurance Company liable to pay interest on the compensation amount. The learned counsel further submitted that the interest awarded at the rate of 12% is excessive.

7. So far as the appellant's first submission about the liability of the Insurance Company to pay interest on the compensation amount is concerned, we need not dilate much on the issue in view of the dictum of the Apex Court in the case of **L.R. Ferro Alloys Ltd. Vs. Mahavir**

Mahto and another reported in **(2002) 9 SCC 450,** wherein it has been held in para 5 as under:

> "5. The only contention put forth before us is that the entire liability including penalty and interest will have to be reimbursed by the insurance company and this aspect has not been examined by the learned Single Judge in the High Court and needs examination at our hands. In *Ved Prakash Garg V. Premi Devi* this Court after examining the entire scheme of the Act held that payment of interest and penalty are two distinct liabilities arising under the Act, while liability to pay interest is part and parcel of legal liability to pay compensation upon default of payment of that amount within one month. Therefore, claim for compensation along with interest will have to be made good jointly by the insurance company with the insured employer. But, so far as the penalty imposed on the insured employer is on account of his personal fault the insurance company cannot be made liable to reimburse penalty imposed on the employer. Hence the compensation with interest is payable by the insurance company but not penalty. Following the said decision and for the reasons stated therein, we modify the order made by the High Court to that extent. The appeal is allowed in part accordingly."

Hence, we reject the first submission made on behalf of the appellant and hold that the Insurance Company is liable to pay interest on the compensation.

8. As regards the other submission about the rate of interest we find that Section 4A of the Workmen's Compensation Act mandates awarding of interest at the rate of 12% or at such higher rate not exceeding the maximum of the lending rates of any scheduled bank as may be specified by the Central Government by notification in the Official Gazette. We are, therefore, satisfied that the Commissioner for Workmen Compensation has not committed any illegality in awarding interest at the rate of 12%. Appellant's reliance on the Division Bench decision dated 05.04.2005 in the case of New India Assurance Company Ltd. Vs. Smt. Kusumlata and another is of no help to the appellant, as the said decision has already been held per incurium in the case of the **New India Assurance Company Ltd. Vs. Smt. Meera Devi and another** reported in **2006 (1) U.D. 278.**

9. For the foregoing reasons, the appeal filed by the Insurance Company under Section 30 of the Workmen's Compensation Act, 1923 is liable to be dismissed and is, hereby, dismissed. No order as to costs.

(Prafulla C. Pant, J.) **(Rajeev Gupta, C.J.)**
25.04.2006 **25.04.2006**

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